



CITY OF BERKELEY, RENT STABILIZATION PROGRAM

SUBLETTING IN BERKELEY

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SUBLETTING IN BERKELEY

Subletting is a transfer of a portion of the remaining term of your lease. Simply stated, you are subletting when you rent to a roommate whose name is not on your original lease and whose rent is paid to you or you have someone stay in your apartment during your temporary absence and pay rent to you.

If your lease specifically prohibits subletting, then subletting is not allowed, and you can be evicted if you sublet in violation of the lease. If your rental agreement or lease is silent on subleasing or only prohibits assignment, then you may sublet. Another possibility is that the lease has a clause stating that you may not sublet without the consent of the landlord. Recent court cases have interpreted this "approval clause" to mean that the landlord must have a commercially reasonable objection to the proposed subtenant to deny approval. For instance, the landlord may consider the financial responsibility or past rental history of a proposed subtenant. If you have questions about whether your lease allows subletting, you should contact a private attorney or the Public Information Unit of the Rent Stabilization Program.

If you decide to sublet, inform your landlord in writing. It is a good idea to send a certified letter and get a Certificate of Mailing at the Post Office when you mail your request to your landlord. Be sure to keep a copy of your request for your files, and be sure that you, your landlord, and the sublessee all receive a copy of the agreement.

When you sublease, you are still legally responsible to the landlord for all of the terms of the lease. In addition, you become a landlord. Therefore, it is a good idea to prepare a sublease that will adequately protect the interests of all the parties involved. This sublease should:

1. Incorporate all the provisions of the original lease.
2. Specify who shall pay how much, and to whom. Include both the

amount of monthly rent and any Security Deposit and Last Month's Rent.

3. Specify the exact period or term of the sublease, and include a statement that you have the right to recover possession of the unit at the end of the term.
4. List an inventory of your possessions and their general condition. Include anything that can be damaged or stolen.

A word of caution, however, is necessary here. Once you sublease your apartment, you may have difficulty recovering your rental unit from an uncooperative subtenant. While recovery of the unit for your principle residence under a written lease provision is good cause under the Ordinance, you still may have to take court action to evict the subtenant.

Whether you are the sublessor or the sublessee, finders fees, bribes, or transfer fees are considered increased rent by the Berkeley Rent Board and are, thus, illegal. Before you charge any fees for subletting, check with the Rent Stabilization Program Office.

It is hoped that the following questions will enable you to better understand your rights and responsibilities when subletting. For the purposes of this brochure, the terms subtenant and sublessee will mean the same thing. Also, for the purposes of this brochure, the terms owner, property owner and landlord all mean the same thing.

Q. IS IT LEGAL FOR A TENANT TO TEMPORARILY RE-RENT THEIR APARTMENT TO ANOTHER TENANT FOR A FEW MONTHS?

A. *Generally, Yes. This is called subletting and the new temporary tenant is called a subtenant. Tenants who have leases can sublet a rental unit to someone else for a few weeks or months as long as the original tenant plans to move back into the rental unit before the end of the lease. However, if there is an anti-sublet clause in the rental agreement, the tenant might not be able to sublease to someone else.*

Q. DOES A TENANT HAVE TO OBTAIN THE OWNER'S PERMISSION TO SUBLET OR ASSIGN THE LEASE?

A. *It depends on what the lease agreement says. A tenant can sublet or assign a rental unit **UNLESS** it is prohibited in the lease agreement. If the lease absolutely prohibits subleasing, then it is illegal to sublease. If the lease agreement has a clause permitting sublets or assignments with the owner's prior permission, the owner can only refuse to allow a sublet or assignment for a reasonable "good faith" business reason such as the inability of the new tenant to pay the rent or comply with the legal requirements of the lease.*

Q. WHAT IF THE ORIGINAL TENANT DOESN'T PLAN TO MOVE BACK INTO THE RENTAL UNIT?

A. *This is called "assignment of the lease." It means that the original tenant is giving up all rights to the rental unit.*

Q. IS A TENANT WHO SUBLETS HIS/HER RENTAL TO A SUBTENANT STILL RESPONSIBLE FOR PAYING RENT TO THE OWNER AND FOLLOWING THE LEASE REQUIREMENTS?

A. *Yes. If the subtenant doesn't pay the rent or violates the lease in other ways, the original tenant is responsible and the lease may be terminated.*

Q. IN A CASE WHERE THE TENANT ASSIGNS THE LEASE TO A NEW TENANT, HOW CAN THE ORIGINAL TENANT MAKE SURE THAT THEY WILL NOT BE HELD LEGALLY RESPONSIBLE FOR THE NEW TENANT'S ACTION?

A. *One way is to ask the owner to accept the tenant's termination of the tenancy and issue a new lease to the new tenant. Another way is to terminate the lease and return the unit vacant to the landlord. The tenant should be sure to send a written notice to the landlord terminating his/her tenancy when the tenant moves out of the rental unit.*

Q. DOES A SUBLESSEE HAVE TO FOLLOW THE TERMS IN THE LEASE AGREEMENT SIGNED BY THE ORIGINAL TENANT?

A. *Yes. The sublessee has to pay rent and follow the other requirements in the lease.*

Q. IF, AT THE END OF THE SUBLEASE AGREEMENT, THE SUBTENANT REFUSES TO MOVE OUT, WHO HAS THE LEGAL AUTHORITY TO EVICT THE SUBTENANT?

A. Generally, only the original tenant can evict the subtenant at the end of the sublease agreement. The owner can evict the subtenant only for violations of the agreement between the owner and the original tenant.

Q. IF THE PROPERTY IS NOT IN COMPLIANCE WITH THE RENT LAW, WILL THE ORIGINAL TENANT BE ABLE TO EVICT THE SUBTENANT?

A. Generally not. A tenant considering subletting should check to make sure that the property is in compliance with the rent law before subletting.

Q. DOES THE OWNER'S ACCEPTANCE OF RENT CHECKS FROM THE SUBTENANT CONSTITUTE A RENTAL AGREEMENT BETWEEN THE OWNER AND THE SUBTENANT?

A. Probably yes. If the original tenant wants to protect his/her interest in the property, which includes being able to occupy the premises or part of the premises occupied by the subtenant, he/she should have the subtenant pay rent to him/her, rather than directly to the property owner.

Q. WHAT CAN A SUBTENANT DO IF HE/SHE DISCOVERS THAT THE ORIGINAL TENANT IS CHARGING MORE RENT THAN LEGALLY ALLOWED?

A. First, he/she should discuss the matter with the original tenant and try to resolve the issue. However, if the subtenant is unable to reach an agreement with the original tenant, then he/she can file a petition with the Rent Stabilization Program against the original tenant for a rent reduction.

Q. IF THE ORIGINAL TENANT OVERCHARGES THE SUBTENANT, DOES THAT AFFECT THE OWNER'S ELIGIBILITY TO TAKE THE ANNUAL GENERAL ADJUSTMENT?

A. Not unless the owner also overcharged the tenant.



Q. IS IT LEGAL UNDER THE BERKELEY RENT LAW TO CHARGE A SUBLET OR ASSIGNMENT FEE IN ADDITION TO THE LEGAL RENT?

A. No. The fee is considered rent and would constitute an illegal overcharge.

Q. IS THERE ANY LEGAL DIFFERENCE BETWEEN TAKING A ROOMMATE AND SUBLETTING?

A. No. In the roommate situation the original tenant also continues to reside in the rental unit and therefore has more control over what is going on in the rental unit.

Q. CAN THE ORIGINAL TENANT CHARGE THE SUBTENANT MORE THAN THE LEGAL MAXIMUM RENT?

A. No. In no instance can the original tenant charge more than the maximum rent ceiling for the rental unit. Where the original tenant continues to reside in the rental unit and does not share kitchen or bath facilities with the subtenant, the original tenant can only charge the subtenant a reasonable proportion of the maximum lawful rent for the unit.

Q. IF TWO PEOPLE RENT AN APARTMENT AND ONE MOVES OUT, CAN THE OWNER PROHIBIT THE REMAINING TENANT FROM GETTING A NEW ROOMMATE?

A. The owner must approve a reasonable choice. The remaining tenant should work with the owner to choose a new tenant/roommate. If the owner refuses to allow a replacement tenant, the tenant can file a petition for a rent decrease with the Rent Stabilization Program.

This document was produced by the Public Information Unit (P.I.U.) of the Rent Stabilization Program, in collaboration with the Renters Assistance Project of the A.S.U.C. For additional information please contact the P.I.U. at 644-6128, located at 2100 Milvia Street in Berkeley on Monday through Friday from 9:00 A.M. to 4:45 P.M.
June '89

SAMPLE SUBLET AGREEMENT

_____ agrees to sublet from the current tenant
(subtenant's name)

_____ the premises located at _____
(tenant's name) (address)

(city/state)

_____ has the right to move into the above (subtenant's name)
(subtenant's name)

described property on _____, and agrees to have all possessions and/or
(date)

persons moved out no later than _____.
(date)(time)

(Add any additional terms/conditions here)

_____ is aware that while living on the premises, s/he is
(subtenant's name)
legally responsible to follow all the terms of the original lease. A copy of the lease is attached.

If _____ fails to pay rent or/and does not follow the terms of the
(subtenant's name)
agreement and fails to comply with the agreement following a written notice, the original

tenant _____ may terminate all rights of the subtenant as outlined in
(tenant's name)

the law. If this should happen, the original tenant has the right to recover any rent due and damages from the subtenant which occurred under the terms of this sublease. If any controversy arises under this sublease related to the rental unit and legal action becomes necessary, the winning party will be entitled to his/her costs including all attorney's fees.

(tenant's signature)

(subtenant's signature)

(owner's signature, if required)

(date signed)